IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

O R D E R

Food Corporation of India & ors.
Vs.
M/s. Ram Bharosi Lal Mahavir Prasad

S.B. CIVIL REVISION PETITION No. 567/2003 against order dated 4.1.2003 passed by the Addl. District Judge, Dholpur in Civil Regular Appeal No.15/2002..

Date of Judgment :: April 23, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. S.C. Mittal for the defedant-petitioners.
Mr. Parag Rastogi for the plaintiff-respondent.

BY THE COURT:

1. This revision petition is directed against the order dated 4.1.2003 allowing the appeal of the plaintiff respondent M/s.Ram Bharosi Lal Mahavir Prasad, setting aside the order of the learned trial court dated 22.10.2001. Hence, this revision petition at the instance of defendant Food Corporation of India.

2. The plaintiff claimed in the plaint that he was given a contract of transportation and handling by the Food Corporation of India between Dholpur Railway Station and godown of Food Corporation situated at GT Road, Dholpur and his tender was accepted by FCI on 12.8.1983 and he was to start the said work immediately, therefore, he reported for the said work along with his labourers to FCI on 27.8.1983 but was not allowed to undertake the

said work and, therefore, he suffered damages for the period 27.8.1983 to 2.9.1983, for which period he had to keep such labourers engaged for the said work and had to pay to them their wags. In the written statement, the petitioner FCI contended that firstly on 27.8.1983 the plaintiff did not report for undertaking the said work along with labourers as no work order was issued by FCI for commencing the said work on that date. Secondly, since there was an injunction order granted by a civil court on 4.6.1983 in favour of the previous contractor directing the FCI to maintain status quo in a suit filed by the previous contractor for restraining other contractor who was given the said work at the risk and cost of the said previous contractor and since the said injunction order was vacated only on 6.9.1983, being bound by that injunction order, there was no question of FCI allowing the plaintiff to undertake the said work on 27.8.1983.

3. Learned counsel for the FCI relying on the judgments in case of **Prakash Narain Sharma Vs. Burmah Shell Co-operative Housing Society Ltd.** [AIR 2002 SC 3062]; and **Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.** [AIR 2003 SC 2629] submitted that under the judicial order operating against petitioner FCI they were required to give effect to the said order and could not be held liable to pay the damages to the present plaintiff and the Appellate Court had erred in reversing the cogent findings based on evidence given by the learned trial court rejecting the suit of the plaintiff. He further submitted that no interest could be awarded by the learned trial court contrary to clause (11) of the contract which prohibited any interest on security deposit made by the plaintiff.

4. Per contra, Mr. Parag Rastogi, learned counsel appearing for the respondent plaintiff submitted that there was no information given to plaintiff when he visited the FCI office on 27.8.1983 along with his labourers that there was any injunction order and the officer whom the plaintiff met, Mr. Bhardwaj was not produced by FCI in the witness box and, therefore, drawing the adverse inference, the Appellate Court had decided the issue in favour of the plaintiff. He further submitted that award of interest was within the discretion of the court as per Section 34 of the CPC, notwithstanding clause (11) in the tender document. He further urged that the damages only represented the actual expenditure incurred by the plaintiff for engaging the said labour and since the work was not allowed to be commenced on 27.8.1983 though the tender was accepted on 12.8.1983 and the work was to be started immediately and thus there was no question of giving any further work order, therefore, the Appellate Court was justified in awarding the damages.

5. Having perused the impugned orders and evidences on record, this Court is of the opinion that the present revision petition of Food Corporation of India deserve to be allowed. Once it is beyond pale of doubt that there was an injunction order against the petitioner FCI directing the FCI to maintain status quo, there was no question of FCI allowing the plaintiff to commence the work on 27.8.1983. After vacation of injunction order on 6.9.1983, the petitioner FCI sent as many as five telegrams to the respondent plaintiff to commence the work but the plaintiff did not do so. No separate work order was issued to the plaintiff to commence the said work on 27.8.1983. It was also urged during the course of arguments by the learned counsel for the FCI that the entries made in the register at the gate of FCI did not

indicate that the said plaintiff had reported on 27.8.1983 along with 40 labourers as claimed by the plaintiff. In view of all these evidences and case laws relied upon by the learned counsel for the petitioner, this Court is of clear opinion that there was no question of awarding any damages to the plaintiff in these circumstances. The learned Appellate Court has, therefore, erred in awarding the damages of Rs.12,000/- with interest to the plaintiff respondent and the said order deserve to be set aside.

6. Consequently, this revision petition is allowed and the impugned order dated 4.1.2003 of the Appellate Court is set aside and that of the learned trial court dated 22.10.2001 is restored. No order as to costs.

(Dr.VINEET KOTHARI),J.

VS/